

March 31, 2013

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE

JOINT APPLICATION OF YMG CORPORATION AND TIDEWATER ENVIRONMENTAL SERVICES, INC., FOR APPROVAL OF THE SALE OF ASSETS AND TRANSFER OF CPCN FROM YMG CORPORATION TO TIDEWATER ENVIRONMENTAL SERVICES, INC. (FILED NOVEMBER 7, 2012)
PSC DOCKET NO. 12-497

IN THE MATTER OF THE APPLICATION OF TIDEWATER ENVIRONMENTAL SERVICES, INC., FOR A GENERAL RATE INCREASE FOR WASTEWATER SERVICES FOR THE CUSTOMERS OF THE PLANTATIONS RESIDENTIAL COMMUNITY WASTEWATER SYSTEM (FILED NOVEMBER 7, 2012)
PSC DOCKET NO. 12-498WW

DIRECT TESTIMONY OF THE JOINT WASTEWATER COMMITTEE OF
THE PLANTATIONS AND THE PLANTATIONS EAST – INTERVENOR

Our Committee consists of members: Mike Bono and Thomas Lechner from The Plantations East and Nancy Almay and Robert Dickey from The Plantations. We have also received input from various owners in The Plantations and The Plantations East to give a better understanding of our owners' position. Robert Dickey was appointed Chairman of the Joint Wastewater Committee by the Presidents of The Plantations Owners Association Board of Directors and The Plantations East Home Owners Association Board. We have been trying to collect information regarding our wastewater situation and apprising the six hundred eleven (611) owners of any developments. As members of the Joint Wastewater Committee of The Plantations and The Plantations East who have been admitted as an Intervenor in the above filings, we submit the following Direct Testimony.

1. To give a better understanding of our owners' position, we submit a brief history of the wastewater treatment system of The Plantations and The Plantations East. (Exhibit 3 included in the filing of Joint Applicants for Transfer of Assets & CPCN) The system was built by Crown Estates in the mid 1980's.

YMG purchased the wastewater facility on September 21, 1989.

The Owners Covenants called for "Right of First Refusal" on sale of wastewater facility but the Builder-Controlled Board of Directors of The Plantations Owners Association, Inc., signed a written consent in lieu of a special meeting of the Board of Directors.

This specific action gave the owners at the time, *NO "RIGHT of FIRST REFUSAL"!!*

2. YMG took over the wastewater treatment system. The Plantations built out to present is 232 owners' units. The Plantations East built out is 379 owners' units. (These are the 611 owners we represent). The owners of The Plantations and The Plantations East have

paid literally millions of dollars to YMG, Inc. over the 23 years for wastewater treatment services.

We believed YMG was properly maintaining our wastewater treatment facility.

YMG DID NOT!!

With positive cash flow from our payments, YMG should have been able to properly maintain the wastewater treatment facility. YMG did not pay for all needed proper maintenance. YMG disinvested and refused to make additional capital expenditures in our wastewater facility to keep it operating properly. YMG should have installed a new liner in the aerated lagoon at least 5 years earlier.

3. We became aware of YMG's violations in February, 2011, when DNREC issued its news release and penalty notice to YMG Corporation for wastewater treatment violations. The eleven page DNREC Notice was included by the Joint Applicants in their filings on these cases.

The following is DNREC's news release (February 18, 2011) regarding YMG's violations:

"Department of Natural Resources and Environmental Control Secretary Collin P. O'Mara has issued a Notice of Administrative Penalty Assessment and Secretary's Order to YMG Corporation for violations of regulations governing the land treatment of wastes and State of Delaware operational and repair permits. The penalty order totals \$233,818, which includes reimbursement to DNREC for expenses associated with its investigation. YMG Corporation operates The Plantations Wastewater Treatment and Spray Irrigation Facility in Rehoboth Beach. This facility is designed to treat domestic wastewater from the Plantations development and spray irrigate the treated effluent on adjacent parcels of land. On March 2, 2006, DNREC's Ground Water Protection Branch (GWPB) performed a hydrogeological review of the facility. The report further recommended an evaluation of the facility's aerated lagoon and, if found to be leaking, that the lagoon be repaired by installing a synthetic liner in it. From then until March, 2009, DNREC made numerous attempts to obtain YMG's voluntary compliance in this matter pursuant to 7 Del. C. 6019 and eventually issued a repair permit to YMG on April 6, 2009. The permit, which authorized YMG to install the synthetic liner, expired a year later without completion of the required repairs. On August 3, 2010, DNREC issued a Notice of Violation (NOV) to YMG for elevated nitrate concentrations in several monitoring wells and for the failure to complete required repairs on the aerated lagoon. The NOV contained specific compliance requirements, which YMG, has not met, meaning violations are still outstanding."

The DNREC Administrative Penalty led directly to YMG's willingness to sell its wastewater facility to Tidewater Environmental Services, Inc (TESI). The Administrative Penalty of \$233,818 should be the responsibility of YMG and not the owners of the Plantations Communities.

We as homeowners of The Plantations and The Plantations East were not treated fairly by the original builder (Crown Estates)! We have not been treated fairly by YMG! We all look forward to being treated fairly by TESI! We look forward to having a wastewater service that operates properly and being charged a just and reasonable rate for this service. We look forward to being treated fairly by the Delaware Public Service Commission in setting a just and reasonable wastewater service rate for us and TESI!

- 4. We, as customers of YMG, request that the PSC request DNREC to notify the PSC and the affected customers (communities with systems covered by DNREC Permits and PSC CPCN) when ongoing violations are occurring. This notification would have let the PSC know that violations are occurring that could be used as reasons for possible revocation of the CPCN under which the offending provider operates. This procedure would most likely have avoided the 5 or 6 years delay in dealing with YMG improperly handling our operating wastewater system.**
- 5. On March 5, 2012, TESI entered into an Asset Purchase Agreement with YMG which was amended on June 19, 2012. The Agreement is the subject of the Joint Applicants Filings being considered by the PSC on the present cases. As part of the Agreement, TESI indicated that upon settlement, "Buyer" (TESI) agrees to assume full responsibility and cost for resolving compliance issues associated with the penalty assessment and operation of the Acquired Assets, including any required remediation work. (3b, page 2 of Asset Purchase Agreement)**

Prior to completing YMG's sales agreement, TESI's attorney received a letter from DNREC with remedial work and mentioning DNREC would waive Administrative Penalty and limit DNREC's cost recovery enforcement action to \$16,000. (This was submitted as evidence with DPA/PSC -15.) We want TESI to make required upgrades and initiate long term monitoring per agreement with DNREC. Our owners strongly feel that we should not have to pay the remaining \$16,000. TESI should not pay it. They would then just pass it on to us as an expense. This is not an expense that we should be burdened with because we did not cause the penalty! YMG's inaction on an important maintenance matter led to them to being assessed the \$16,000 penalty, not the customers. Expecting customers to pay the \$16,000 penalty is not the right thing to do. Adding \$16,000 to Schedule 3B-9 is NOT a FAIR, JUST OR REASONABLE expense to the customers!

- 6. Our owners support the approval by the PSC for Transfer of Assets and CPCN from YMG to TESI. We feel the PSC should stipulate in its approval of sale from YMG to TESI and Transfer of CPCN the YMG should pay \$16,000 from its proceeds from the sale.**
- 7. Our owners strongly feel that some parts of TESI's request for a General Rate Increase are not just and reasonable. DNREC's \$16,000 penalty should not be counted as an expense by TESI. This expense should be paid by YMG which would directly lower**

revenue requirement needed by TESI to maintain TESI's ROE. Eliminating the \$16,000 would also reduce the rate increase requested by TESI. There are some other reported expenses which are higher than needed to actually purchase and operate our wastewater system. We will mention some of these items below. These lowered expenses will also lower the revenue requirement needed in rate setting. Our rates would be lower!

8. It is noted that YMG has a Lease Agreement with Sharp Gas/Propane. The Lease will be transferred with the transfer of Assets from YMG. The Sharp Energy original Agreement started on July 15, 1993 (DPA/PSC-39) and will expire in the first half of 2014. The agreement was made when YMG and 1600 Limited Partnership were owner, manager and developer of The Plantations East and its 379 units. The agreement allowed Sharp Gas access to The Plantations East to "locate and install storage tanks, supply lines, regulators, meters and all other equipment necessary to provide propane gas and appliance service to Development (The Plantations East)."

As reported in PJC-4 and DPA/PSC 50, Answers to Request for Information to TESI & YMG: "TESI has determined that the Lease termination would require TESI to assume ownership of all components of the propane gas distribution system, except for the propane gas storage tank. TESI believes the Lease termination could create significant disruption in the domestic propane gas service for the residents of The Plantations, for those residents presently receiving such service from Sharp Gas/Propane. TESI believes renewal of the Lease by TESI would likely be in the best interest of the residents."

We believe the revenues associated with the Sharp Gas service should be used to determine the revenue requirement and rate setting for our owners which are the customers of The Plantations regulated wastewater system. These revenues have typically been in excess of \$16,000 per year except during usually mild winters. (DPA/PSC-30) The annual revenues could increase substantially with the New Lease Agreement which will begin in 2014. We also feel that TESI would be providing a useful service to the community and the revenue would hold down the rates being charged by TESI. This would be very much appreciated by all our owners!

9. YMG had additional revenue from renting parking areas located on The Plantations wastewater facility land. YMG also sold hay harvested on wastewater facility land. TESI states that they do not plan to continue to allow parking of vehicles because of security reasons. (PJC-5) There is the possibility of new customers in the future being added to our wastewater system. Any additional revenue sources should be used to help determine the revenue requirements and rate setting in this rate setting case.
10. We want to commend TESI on developing a very good plan to upgrade and remediate the operation of our wastewater system, if TESI is approved to by the PSC to take over YMG's operation. When TESI takes over operation, they plan to extensively test the

whole system, replace all lift station pumps in 3 years, add generators as backup, install a better well monitoring program, replace existing irrigation system, install chart recorders and supply pumps and other capital improvements costing \$648,595 for the first year of operation. (Testimony of Jeremy M. Kalmbacher in Rate Application; also, DPA/PSC - 27 and DPA/PSC - 28)

11. We want TESI to do all that is required to give us a wastewater system that is operated properly and satisfies DNREC's requirements to eliminate the Administrative Penalty previously imposed. Mr. Kalmbacher, in his Rate Increase Application Testimony, indicates that "all of these projects are necessary, prudent and reasonable in order to provide safe, adequate and proper service." We feel that most of the planned improvements are needed and prudent. We strongly feel that Prudence should be the determining factor used by the PSC in determining whether expenditures be used in establishing revenue requirements used in rate setting by the PSC. This would insure just and reasonable rates.
12. We very much hope that the improvements can be completed by TESI under budget! We note this is an expenditure projection for money TESI plans on spending in the first full year of operation. We request that the budgeted amount be reduced by \$160,000 to account for "high side" estimation of the projects and expenditures not determined to be needed after the complete evaluation of our system. TESI reported to us that they do not have a recorded condition of each piece of equipment. (PJC-3C)

YMG submitted testimony that for the last 3 years they have paid over \$400,000 in maintenance and repairs. Some of this expense included replacement of capital items. They noted that three (3) lift station pumps were replaced. (PJC-2A and 2B, page 4 of 6) Hopefully, some of YMG's expenditures during the last 3 years will lower the need for the planned expenditures on TESI's part and result in lower revenue requirements in rate setting.

TESI will also be able to request higher rates from customers with additional capital expenditures not covered by their approved rate.

We request that TESI give an itemized list of expenditures on the remediation being completed on our system to the PSC and a copy to use each year with the PSC Annual Report.

13. We are in favor of the "Community-By-Community Rate Approach" approved by the PSC in Rate Case 11-329WW. We want the PSC to make sure that all rates approved are not consolidated rates allowing TESI to make up for Net Income Deficiencies. We want this standard applied to our rate case.
14. Another situation where reduced expenses might occur is Customer Records and Collection (Schedule 3B-5). Schedule 3B reports the total yearly costs as \$7,862. These

costs are subdivided as postage, \$2,938; billing services, \$979; and, pay portal/lockbox, \$3,945.

It is noted that TESI is an affiliate of Tidewater Utilities, Inc. (TUI). All of our 611 owners have units with TUI water service. We strongly suggest that when possible, the TESI wastewater service billing be included with the TUI water bill to form a single bill. TUI charges \$67.95 to each water customer for total facilities charge and this includes postage and pay portal/lockbox. A single bill would greatly eliminate most of the double expense to TUI/TESI of \$7,862. This economy of effort by TUI and TESI would save them expense of running two separate billing systems. This saving should be passed on to us, the customers, with a direct reduction in expense to lower the revenue requirement used in rate setting. This would help give us the lower rates that we all desire.

15. In the General Rate Increase Application, dated November 6, 2012, TESI requests: ".....that the proposed increase in rates go into effect in phases as follows: Fifteen percent (15%) of the proposed increase to be effective upon transfer of the Plantations wastewater system to TESI, thirteen percent (13%) of the proposed increase to be effective six (6) months after the first increase, with the balance of the rate increase to be effective twelve (12) months after the first increase."

We request that any approved increase go into effect in phases as follows: one third of the increase to be effective upon transfer of the Plantations wastewater system to TESI; one third increase effective one year later; and the final third effective two years after the first increase. It is noted that the City of Milton TESI customers received a five (5) year phase-in of rate increase. (11-329WW, PSC order 8153)

A three (3) year phase-in will help lessen the impact of the approved rate increase on our owners. It is noted that many of us have fixed incomes. The three year period is also used by TESI in instituting improvements in our wastewater system.

16. We are in favor of any other testimony that recommends a lower rate increase. If the PSC Staff; Consultant, Howard Woods; Intervenor State Solicitor, James Adams; or, the Public Advocate Staff recommend lowering the proposed general rate increase proposed by TESI, we concur with their recommendation.
17. We thank TESI for being willing to take over the operation of YMG's failing wastewater system serving The Plantations and The Plantations East. We want TESI to make the needed upgrades to have a reliable and efficient wastewater system.

We want our wastewater service to have a just, fair and reasonable rate.

This electronic Direct Testimony is being sent to ALL persons on the current Service List. A hard copy of this Direct Testimony is being sent to persons on the current Service List, PSC Consolidated Docket Nos. 12-497 and 12-498WW, Tidewater YMG Wastewater Case, as appropriate.

Thank you for your consideration of our Direct Testimony.

Respectfully Submitted,

Robert Dickey

Chairman, Joint Wastewater Committee of The Plantations and The Plantations East